

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**

|   |
|---|
| California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115. |
|---|

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

LAQUITA EVETTE STEWART,

Defendant and Appellant.

B293781

(Los Angeles County  
Super. Ct. No. BA439725)

APPEAL from a judgment of the Superior Court of Los Angeles County. Richard S. Kemalyan, Judge and David M. Horowitz, Judge. Affirmed.

Christopher Muller under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Scott A. Taryle, Supervising Deputy Attorney

General, and Nancy Lii Ladner, Deputy Attorney General, for Plaintiff and Respondent.

\* \* \* \* \*

Laquita Stewart (defendant) argues that the trial court abused its discretion in revoking and terminating her probation, and sentencing her to its previously imposed sentence of three years in jail. Because there was no abuse of discretion, we affirm.

### **FACTS AND PROCEDURAL BACKGROUND**

In September 2015, defendant pled guilty to a single count of grand theft auto (Pen. Code, § 487, subd. (d)(1)).<sup>1</sup> The trial court suspended the imposition of sentence and placed defendant on formal probation for three years, which included the requirements that she (1) complete 400 hours of community service, (2) regularly report to the Probation Office, (3) pay restitution of \$500 to the victim, and (4) pay fines, fees and the costs of probation that came to an additional \$3884.

In April 2016, defendant admitted to violating her probation. The trial court revoked probation, but reinstated her probation.

In November 2017, defendant again admitted to violating her probation. The trial court revoked probation, imposed a high-end sentence of three years in the county jail, but suspended execution of that sentence and reinstated her probation. The court imposed this sentence so that defendant could “take care of [her] baby,” but warned her that “[n]o judge can undo” the three-year sentence he imposed should probation be revoked, and she be sentenced.

---

<sup>1</sup> All further statutory references are to the Penal Code unless otherwise indicated.

In July 2018, the trial court summarily revoked defendant's probation after the Probation Office reported that, in nearly three years of probation, defendant (1) had not completed any of the 400 hours of community service (or, for that matter, even *enrolled* in the community service program), (2) had reported to the Probation Office for only six of the 34 monthly appointments, and (3) had paid only \$35 of the \$4384 she owed as restitution, fines, fees and costs of probation.

In September 2018, the court held a probation revocation hearing. Two witnesses testified—namely, defendant's probation officer and defendant. The court found that defendant had violated the terms of her probation by (1) “fail[ing] to enroll and complete . . . 400 hours of community service,” (2) “fail[ing] to report to probation,” and (3) “fail[ing] to pay the cost of probation.” Because the first two violations were “severe” and because the court, “from looking at this file . . . does not believe that [defendant] . . . can possibly be successful in completing her probationary status” or “complet[ing] her probationary obligations,” the court terminated probation. This left “the issue of sentencing.” Because the court had, in November 2017, imposed a specific sentence but suspended its execution, the court stated that it did not “have any choice” with respect to sentencing and would “have to impose” that prior sentence. The court then imposed the previously imposed sentence of three years in the county jail.

Defendant filed a timely appeal.

### **DISCUSSION**

Defendant argues that the trial court abused its discretion in terminating her probation and in sentencing her to the previously imposed sentence of three years in the county jail.

When a trial court imposes sentence upon a defendant but suspends its execution in order to place that defendant on probation, the court at any subsequent probation violation hearing must decide: (1) whether the defendant violated the terms of her probation; (2) if there was a violation, whether to reinstate probation or terminate probation; and (3) if the court terminates probation, what sentence to impose. (§ 1203.2, subds. (a), (b)(1) & (c); *People v. Medina* (2001) 89 Cal.App.4th 318, 321.) The third decision is an easy one because, if the court terminates probation, the court must impose the previously imposed sentence. (*People v. Howard* (1997) 16 Cal.4th 1081, 1095.) With respect to the first two decisions, we review the trial court's finding that probation is revoked for substantial evidence (*People v. Arreola* (1994) 7 Cal.4th 1144, 1161) and its decision whether to reinstate or terminate probation for an abuse of discretion (*People v. Bolian* (2014) 231 Cal.App.4th 1415, 1421 (*Bolian*)).

The trial court properly sentenced defendant to three years in the county jail. Defendant does not dispute that substantial evidence supports the court's finding that she violated the terms of her probation by failing to report, to complete (or enroll in) her community service obligation, or to make anything more than nominal payments toward her financial obligations. The court also explained why it was revoking probation rather than reinstating it—namely, that defendant's minimal efforts over the three-year probationary period all but established that reinstatement of probation would be of no use. The court then imposed the previously imposed sentence, as it was required to do.

Defendant offers two arguments in response.

First and chiefly, she argues that the court mistakenly believed that it had “no choice” but to terminate her probation, and thus never exercised any discretion in deciding whether to terminate or reinstate her probation. The court’s failure to exercise its discretion, defendant concludes, was itself an abuse of discretion. (See *People v. Sandoval* (2007) 41 Cal.4th 825, 847-848 [“A failure to exercise discretion also may constitute an abuse of discretion.”].) For support, she cites *Bolian, supra*, 231 Cal.App.4th 1415.

We reject this argument because “[a] fair reading of the record does not disclose any misunderstanding by the court.” (*People v. Barnett* (1998) 17 Cal.4th 1044, 1107; *Bolian, supra*, 231 Cal.App.4th at p. 1422 [using “fair reading” standard].) The transcript certainly reflects that the trial court was feeling some reluctance and discomfort, as the court stated that it “really [did not] want to do this” and did not “do this happily” but had no “choice in this matter.” However, a fair reading of the record indicates that its hesitance pertained solely to the sentence it knew it had to impose, and not its precursor decision whether to terminate or reinstate probation. The court did not hesitate or balk at all in determining that reinstating defendant on probation was not a viable option due to her demonstrated inability to “be successful in completing . . . probation[.]” Significantly, the court did not express any reluctance until it announced that it had moved on to “the issue of sentencing.” The court’s comments are at most ambiguous, but “we may not assume the court was unaware of its discretion simply because it failed to explicitly refer to its alternative sentencing choices.” (*People v. Weddington* (2016) 246 Cal.App.4th 468, 492.) We must follow the “general rule . . . that on a silent record the “the

trial court is presumed to have been aware of and followed the applicable law” when exercising its discretion [citation].” (*Ruelas v. Superior Court* (2015) 235 Cal.App.4th 374, 383; see also Evid. Code, § 664 [“It is presumed that official duty has been regularly performed.”].) *Bolian* is inapt. There, the trial court specifically stated that the probation officer’s recommendation to reinstate the defendant on probation was “illegal and improper.” (*Bolian*, at pp. 1421-1422.) Here, the trial court never indicated a belief that reinstatement was not an option; it simply expressed dismay that its hands were tied when it came to the sentence to be imposed.

Second, defendant cites *People v. Clancey* (2013) 56 Cal.4th 562 (*Clancey*) and thereby seems to suggest that the trial court’s imposition of the three year sentence in November 2017 was the product of improper judicial plea negotiations. We reject this suggestion as both untimely and unmeritorious. It is untimely because defendant neglected to appeal the November 2017 imposing but suspending execution of sentence. (*People v. Mora* (2013) 214 Cal.App.4th 1477, 1482 [order imposing but suspending execution of sentence is an appealable, final judgment]; *People v. Ramirez* (2008) 159 Cal.App.4th 1412, 1420-1421 [judgment final if not appealed in a timely fashion].) It is unmeritorious because *Clancey* bars a court from “offer[ing] . . . inducement[s] in return for a plea” and from “treat[ing] a defendant more leniently because [s]he foregoes [her] right to trial or more harshly because [s]he exercises that right.” (*Clancey*, at p. 575.) Even if we assume this limitation applies to probation revocation proceedings, nothing in the record indicates that the trial court’s decision to impose but suspend execution of a high-term sentence was an inducement to obtain an admission

of a probation violation. Rather, the court listened to defendant's request for a further chance to complete probation and agreed to give her that chance on the understanding that it would likely be her *final* chance. This was not impermissible.

**DISPOSITION**

The judgment is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

\_\_\_\_\_, J.  
HOFFSTADT

We concur:

\_\_\_\_\_, Acting P.J.  
ASHMANN-GERST

\_\_\_\_\_, J.  
CHAVEZ